



**Issue Date: 13 December 2005**

Case No.: 2003-LHC-00331

OWCP No.: 5-115037

*In the matter of:*

LAWRENCE A. LEE,  
*Claimant,*  
v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,  
*Employer.*

**ATTORNEY'S FEE ORDER ON REMAND**

This matter arises under 33 U.S.C. §901, et seq., The Longshore and Harborworkers' Compensation Act, on a claim for compensation. The case was originally assigned to Administrative Law Judge Fletcher Campbell, who scheduled a formal hearing for July 29, 2003, at which time the parties submitted stipulations and requested the entry of an Order. On July 31, 2003, Judge Campbell issued an Order awarding benefits consistent with the stipulations submitted by the parties.

On August 14, 2003, Claimant's counsel, Gregory E. Camden, Esq., submitted a fee petition in the amount of \$2,844.50, representing 11.86 hours of attorney services at \$225.00 per hour and 2 hours of paralegal services at \$80.00, plus expenses of \$16.00. Employer filed objections on September 10, 2003, contending it should not be liable for any fees incurred after its November 25, 2002 offer to pay benefits. On October 6, 2003, Claimant filed a Reply.

On February 20, 2004, Judge Campbell issued an Order on the petition for attorney's fees, finding that Claimant's counsel was not entitled to a fee for services performed after November 25, 2002, the date of Employer's offer to pay benefits because Claimant did not successfully prosecute his claim. In conclusion, Judge Campbell awarded Claimant's counsel a fee of \$46.25 for legal services performed on November 18, 2002.

Claimant appealed to the Benefits Review Board (Board), contending that Judge Campbell erred in not holding Employer liable for legal services performed after the date of Employer's alleged tender. On February 24, 2005 the Board issued a Decision and Order vacating the Order on Petition for Attorney's Fees, and remanding the case for reconsideration of the fee petition and objections thereto. The Board concluded that Employer's offer of payment was not a valid tender under Section 28(b) of the Act. 33 U.S.C. § 928(b) (2004).

Judge Campbell has since retired and this matter has been assigned to the undersigned for consideration of the fee application. The findings below are made after review of Claimant's counsel's fee petition and Employer's objections thereto.

## **Analysis**

On June 27, 2005, Employer, relying on *Weirich v. Newport News Shipbuilding & Dry Dock Co.*, BRBS No. 02-0734 (July 23, 2002) (unpublished), offered the argument that Claimant is not entitled to a fee, since he only received a "tactical" victory. However, as the Board has already considered and rejected this argument, the Board's finding is binding herein.

Claimant's counsel, however, is also mistaken in his argument that he is entitled to the entire fee petition because Employer has failed to make specific objections since the Board's remand. According to the Board's decision, this Court must review Claimant's fee petition in light of Employer's original objections filed before this Court's previous ruling.

### *Employer's General Objections*

Employer argues that Claimant's counsel's requested hourly rate of \$225.00 is excessive from a market perspective and from the standpoint of the complexity of the case. Employer states that the rate should be reduced because it is beyond the prevailing community rate. In the alternative, Employer submitted that \$150.00 an hour is an appropriate fee based on what Employer believes the average client would pay an average attorney in a similar situation. See *Hensley v. Eckhart*, 461 U.S. 424, 434 (1986). Employer also offered the 2002 *Altman Weil Survey of Law Firm Economics* to support its argument that \$225.00 is above the national average hourly rate. Employer further argues that the rate should be reduced because Claimant's monetary recovery was small and there was only one issue for the Court to decide.

However, I have repeatedly held that the appropriate rate for Mr. Camden is \$225.00 per hour, based upon comparable hourly rates for attorneys in the area, the services rendered, the expertise involved, the type of case handled, and the ultimate benefit to the Claimant. I am not inclined to change my view in this case. Therefore, Employer's objection to the hourly rate of \$225.00 is rejected. Based on these same considerations, I find that \$80.00 per hour is an appropriate rate for Claimant's counsel's paralegal staff.

Employer also argues Claimant's counsel's fee petition does not adequately describe the tasks completed to permit an appropriate evaluation of the necessity, extent and character of the items charged for in the fee petition. The regulations require that the application "be supported by a complete statement of the extent and character of the necessary work done," as well as a description with particularity as to the professional status of each person performing such work, the normal billing rate for each person, and the hours devoted by each such person to each category of work. 20 C.F.R. § 702.132(a) (2004). I find Claimant's counsel has met this burden. Claimant's counsel submitted a report that itemized each unit of time expended in representation, including the date, and a brief description of each task. While providing a more thorough description of the tasks completed would be possible, the fee petition clearly meets the requirements of the regulations.

### *Employer's Specific Objections*

Employer specifically identifies entries it believes are duplicative. Based on the guidelines set forth by the Board, the following entries are disallowed because they are duplicative or unnecessary. *See Edwards v. Todd Shipyards Corp.*, 25 BRBS 49 (1991).

12/20/02 Rec., Rev. Answers to Interrog

01/14/03 Letter to Judge

01/23/03 Letter from Employer

07/10/03 Draft Hearing Stipulations

07/10/03 Letter to Opposing Counsel

Also, this Court can only award fees for work performed before the Office of Administrative Law Judges. *Revoir v. General Dynamics Corp.*, 12 BRBS 542 (1980). The record shows that this case was transmitted to the Office of Administrative Law Judges on November 6, 2002. Thus, I am without authority to award fees for work performed prior to that date.

### *Conclusion*

I find that the remaining entries in Claimant's counsel's fee petition comply with the requirements of 20 C.F.R. § 702.132 (2004). Based on the above analysis, I find Employer is liable for Claimant's attorney fees under Section 28(a). Claimant's counsel is entitled to the following: (1) 9.71 hours of work performed by Claimant's counsel at a rate of \$225.00 per hour; (2) 2 hours of work performed by Claimant's counsel's paralegal staff at a rate of \$80.00; and (3) allowed expenses amounting to \$16.00. Therefore, I find that Claimant's counsel is entitled to a total attorney fee award of \$2,360.75. The fee is assessed against Employer in accordance with 20 C.F.R. § 702.132 (2004).

### **ORDER**

It is hereby ORDERED that Newport News Shipbuilding & Dry Dock Company pay the sum of \$2,360.75 to Gregory E. Camden, Esq., for services rendered to Claimant in this case.

**A**

RICHARD E. HUDDLESTON  
Administrative Law Judge